

**TRANSCRIPTION OF INDENTURE OF CO-PARTNERSHIP**

by Wendy Baker. Original document in possession of Irvin Hastwell.  
Photographed in April 2015 by Wendy.

**THIS INDENTURE** made the Twenty-seventh day of September one thousand eight hundred and seventy seven **BETWEEN** James Hastwell the Elder of Enfield in the Province of South Australia Storekeeper of the first part James Hastwell the younger of Two Wells in the said Province Storekeeper of the second part and Ebenezer Hastwell of Mallala in the said Province Storekeeper of the third part

**WITNESSETH** that the said James Hastwell the Elder James Hastwell the younger and Ebenezer Hastwell have mutually agreed and by these presents do agree to become Co-partners together in the trade or business of “General Storekeepers” for their mutual benefit and at their common risk which said Co-partnership shall be carried on under the firm of “James Hastwell and Sons” and shall continue from the twentieth day of March one thousand and eight hundred and seventy seven for and during the term of three years And it is hereby agreed between the said parties and the said Co-partners each for himself and for his respective executors and administrators Doth covenant promise and agree with the other of them his executors and administrators by whose presents in manner following that is to say

1. That the said trade or business shall be managed or carried on at Two Wells and Mallala aforesaid or such other place or places as the said parties shall agree upon.
2. That the said James Hastwell the elder James Hastwell the younger and Ebenezer Hastwell shall be entitled to the clear gains profits and increase arising from the said trade or business of the said joint trade or business of the said Co-partnership in the shares and proportions following (that is to say) the said James Hastwell the elder shall be entitled to one third the said James Hastwell the younger to one third and the said Ebenezer Hastwell to one third and also that all such losses as shall happen in the said joint trade by bad debts or otherwise without fraudulent or wilful neglect or default of either of the said parties and all moneys salaries wages charges and other expenses and payment whatsoever relative to the said joint trade shall be paid and [*illegible word*] between them the said parties in the proportions in which they are severally interested in the Co-partnership profits ----  
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3. That neither of the said parties shall nor will make sign execute or deliver any bond judgement or warrant of Attorney to enter up Judgement nor give sign endorse draw or accept any bill of Exchange or promissory note [*illegible word*] any Policy of Insurance nor release or compound any debt due to them whereby the joint trade can be injuriously affected in any manner howsoever -----
4. That neither of the said parties shall or will at any time during the continuance of this Co-partnership without the consent of the other of them lend any money or give credit nor use or employ the firm of the said Co-partnership in any transaction of notes or bills of accommodation in any matter howsoever nor become bail to the sheriff nor be security for any person or persons whomsoever nor speculate in shares nor enter into any other speculation whereby his capital

stock or estate may be prejudicially affected nor assign or otherwise dispose of his share in the joint trade -----

5. That the Capital joint Stock of the said Co-partnership firm shall consist of the sum of Five thousand two hundred and thirty six pounds twelve shillings and five pence, three thousand five hundred and forty six pounds nine shillings and ten pence whereof has been already paid by the said James Hastwell the elder (as the said James Hastwell the younger and Ebenezer Hastwell do hereby severally admit and acknowledge) Eight hundred and seventy five pounds eleven shillings and eight pence whereof has been already paid by the said James Hastwell the younger (as the said James Hastwell the Elder and Ebenezer Hastwell do hereby several admit and acknowledge) Eight hundred and fourteen pounds eleven shillings and seven pence whereof has been already paid by the said Ebenezer Hastwell (as the said James Hastwell the elder and James Hastwell the younger do hereby severally admit and acknowledge) the whole of which said capital shall at all times during the continuance of the said term be employed solely for the purposes of the said joint trade but in the above named Capital be included all freehold land in the name of the said James Hastwell the elder -----
6. That interest at the rate of six per centum per annum be allowed to each of the respective Co-partners amounts for the first year and on all succeeding years that the said interest be allowed on their respective amounts of Capital as the respective stock takings and balance of the books may show to be their amounts the said interest to be a first charge on the business and each party is hereby permitted to draw out the amount of his interest by equal weekly instalments or otherwise and in the event of their or any one of them not drawing out their respective interest the balance not so drawn out shall be added to the respective capital of such Co-partner -----
7. That each of the said Co-partners shall punctually pay his separate and private debts and indemnify the Co-partnership effects from all claims on account thereof
8. That there shall be had and kept proper books of account wherein each of the said Co-partners shall duly enter and set down as well all money by him received paid and laid out in and about the management of the said trade as also all wares goods commodities and merchandises by them or either of them received bought and sold upon the Co-partnership account and all other matters and things whatsoever to the said joint trade in anywise relating or appertaining together with all such circumstances of names times and places as may be necessary or useful for the better manifestation of the state and proceedings of the said business which said books together with all letters bonds bills papers and costings whatsoever relating to the said joint estate shall be kept in the private residence of the said James Hastwell the elder at Enfield or at the stores at Two Wells and Mallala or such other place decided upon from time to time so that either of them may have free access thereto without any interruption by the other -----
9. That the said James Hastwell the elder shall be at liberty to draw out of the said partnership effects for his own use and benefit the sum of Three pounds per week the said James Hastwell the younger a sum not exceeding three pounds per week and the said Ebenezer Hastwell a sum not exceeding three pounds per week and that the weekly sum to be taken out by each of the said Co-partners shall go and

- be considered as part of his share of the clear yearly gains and profits of the said co-partnership and in case the weekly sum so to be taken out shall at the end of the year exceed the sum which the party taking out the same shall be entitled to at the end of that year then and in that case such party shall be considered as a debtor for such excess to the said Co-partnership -----
10. That no benefit or advantage of ownership shall arise to either of the said parties by the decease of the other of them but that each shall have a sole and separate interest in the capital from time to time belonging to him -----
  11. That the said Co-partners on the thirty first day of March in every year or oftener if need require upon the reasonable request of any or either of them shall make yield and render each to the other a true just and perfect account of all profits and increase as also of all payments receipts and disbursements and all other things whatsoever done or suffered by them in the said joint trade and in the delivery and adjustment of such account shall and will place to the credit of the other of them in the books of the firm their equal share of the clear profits so made as aforesaid
  12. That in case any of the said parties shall do anything contrary to the articles of co-partnership herein contained whereby the said joint trade shall be in any case affected it shall be afforded lawful for the other two of them to give to the parties so offending notice in writing of their desire to dissolve the said Co-partnership and it shall within six months from date of such notice cease and determine in consequence of that notice in the same manner as if the said party was deceased --
  13. That in case of any dissolution of the Co-partnership whether by the effluxion of time, by death, agreement or otherwise they the said Co-partners each to the other or in case of the death of either of them to the executors or administrators of the deceased partner shall and will make a true just and final account of all things as aforesaid and adjust and wind up the partnership accounts and upon the making such final account they the said parties shall forthwith pay or lake good for the speedy payment of all debts due and owing by them on their joint account in respect of the said co-partnership and shall part and divide all and every the money ditto stock goods wares merchandize and effects belonging due and owing to the said Co-partnership or joint business between the said parties in the same proportions as hereinbefore pointed out for payment of the profits and that the said parties shall give mutual bonds in a sufficient penalty for the payment of their parts or shares of the debts owing by them as aforesaid and for the saving harmless and indemnifying each other and their respective heirs executors and administrators of and from the [*Illegible word*]of each other part or share of such debts and of and from all costs charges and expenses in account thereof and that they shall immediately upon such partition and division as aforesaid well and sufficiently convey and assign unto each and empower each to recover and receive his respective part and share of all such debts and sums of money then due and owing to or on account of the said co-partnership -----
  14. Provided nevertheless if at the determination of such co-partnership either of the said parties shall be minded and desirous of retiring altogether from the said trade or business in that case the party who is desirous to continue and carry on the same shall be [*words missing in folds*] to purchase the share of the retiring party at a valuation to be made by two indifferent persons one of them to be chosen by

each party or his respective executors or administrators or by an umpire to be chosen by such two persons which valuation shall be taken and considered as the price or value thereof and if within the space of six calendar months after such valuation such continuing partner shall well and truly pay unto each retiring partner the amount or value so to be ascertained that then and in such case the part or share of such retiring partner shall become the absolute property of the party so paying for the same -----

15. That at the end or other sooner determination of the said co-partnership by any of the means aforesaid notice thereof shall be given in the South Australian Government Gazette and also to all the correspondents of the said Co-partnership by Circular Letters under the hands of the said Co-partners -----
16. And lastly it is hereby declared and agreed that if any doubt difference or dispute shall at any time arise between the said parties touching the construction of these presents or any clause matter or thing herein contained or relating to the management and settlement of the said joint trade and co-partnership and that doubt question or difference shall not be fully decided between them within three calendar months after the same shall arise then in and as often as the same shall happen such case or matter shall be referred to the arbitration of two indifferent persons to be chosen by the said parties their executors or administrators of an umpire to be appointed by them or him and the award of which said arbitrators or umpire shall be final conclusive and binding on the parties between whom such question shall arise and in case either of the said parties his executors or administrators shall refuse or neglect to appoint or name such arbitrators for the period of fourteen days after he shall have been required so to do it shall be lawful for the referee of the party so requiring nomination to appoint an arbitrator of himself and that decision or award shall be binding on the said parties or their presents their respective executors or administrators arbitrators or their umpire could have been [*words illegible on paper fold*]made a Rule of the Supreme Court of the Province of South Australia [*words illegible on paper fold*]IN witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written

Signed sealed and delivered)  
by the said James Hastwell )  
the Elder in the presence of)  
David Parkenham

James Hastwell  
James Hastwell  
Ebenezer Hastwell

Signed sealed and delivered  
by the said James Hastwell  
the Younger in the presence of  
David Parkenham

Signed sealed and delivered  
by the said Ebenezer Hastwell  
in the presence of  
David Parkenham

